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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION No. 376 OF 2004

Mrs. Asha Pravin Pawade,)
Aged 30 years, Occu.- Nil)
Residing at Room No. 11)
& 12, 2nd floor, Laxmi)
Building No. 92 & 94,)
Wadi, Bhuleshwar,)
Mumbai 400 002) ... Petitioner

Vs.

Mr. Pravin Haribhau Pawade,
Age 33 years, Occu.-)
Rickshaw driver/owner,)
Room No.10, Subadar)
Bainath Yadav Chawl,No.2)
Tanaji Nagar,Kurar village
Malad (East), Mumbai-97) ... Respondent

Ms. J. A. Sarkhot i/b V.D. Govilkar Advocate for petitioner.

Mr. V. K. Nair, Advocate for respondent No.1.

Smt. V. R. Bhosale, APP for Respondent-State.

CORAM: J. N. PATEL,
AND
A. A. SAYED, JJ.

DATE : APRIL 26, 2007.

ORAL JUDGMENT:

. Heard the learned counsel for the petitioner /applicant. The Revision Application filed by the wife , impugning the judgment and order dated 12th April, 2004 of the Family Court, wherein the petition being M.J. Petition No. E-79 of 2001 for seeking maintenance

for herself and her minor child under section 125 Cr.P.C. @ Rs.1,500/- per month, was partly allowed by granting maintenance of Rs.300/- per month, for the child from the date of order and Rs.500/- per month towards the child's maintenance, from the date of order, whereas her claim of maintenance came to be rejected.

2. The petitioner got married with the respondent on 22-4-1996 and out of wedlock, Pinky was born on 15-3-1997. It was the case of the applicant/wife that due to cruel treatment, meted out to her by the respondent/husband and his inlaws, she was forced to leave her matrimonial home in the year 1999.

3. It is the case of the applicant/wife that as she was forced to leave the house due to cruelty inflicted upon her and as she is unable to maintain herself, she was required to file application under section 125 Cr.P.C. before the Family Court.

4. It is the case of the applicant/wife that the respondent is rickshaw driver and is earning Rs.10,000/- per month. Therefore, though he has sufficient means to provide maintenance, he has refused neglected and failed to pay her maintenance.

5. On the basis of evidence led before the Family Court, the learned Judge of the Family Court arrived at the conclusion that the respondent/husbabnd has refused and neglected to maintain the applicant and her child. But then only child was found entitled for maintenance. The learned Judge found that from the cross-examination of the applicant/wife, that applicant has not been able to prove her case of refusal and neglect by the respondent, as the applicant herself left the matrimonial home, without any justification and that she was not in a position to prove that she was treated with cruelty by the respondent and his family members.

6. The learned Judge also found that even during pendency of the proceedings, the respondent husband has shown willingness to reside seperately from his parents and relatives and though the applicant assured the respondent to come and stay with her, she did not come to him, and therefore, the respondent cannot be called upon to provide maintenance to the wife.

7. The learned counsel appearing for the applicant addressed us on the evidence led by the parties, before the Family Court and submitted that the evidence of the applicant before the Family Court has gone unchallanged, as the respondent/husband chose not to cross examine

PWs.

8. On the other hand, it is contended by the learned counsel for the respondent that the evidence on record read as a whole rather clearly indicates that the applicant/wife has herself left the matrimonial home and refused to accept offer given by the husband and to come and to cohabit with him, and therefore, the judgment and order does not call for any interference.

9. The learned counsel appearing for the respondent has also contended before us that now presently respondent/husband is not plying auto rickshaw and has no source of income and that he is dependent on his family members. In her evidence before the Family Court, the applicant/wife has categorically stated that after her marriage, she went to reside in her matrimonial home, which consisted of her parents in laws, 2 brothers & 2 sisters, i.e. it was a joint family and whenever her parents visit respondent did not allow her to meet her father. Even she was not allowed to speak with her parents on telephone and was made to do all the household work, but the family members were not satisfied and used to quarrel on small issue. The Family members also used to instigate the respondent to quarrel with her on the pretext that she is not working

properly and on this count, the father in law of the respondent/husband even took away her Mangalsutra. She was not given proper food and attempts made to starve for 2-3 days. It has further come in her evidence that initially, she borne the illtreatment and harassment meted to her by her inlaws, without informing her parents and that while she was carrying for 7 months and when her father had come to her to take for delivery, she was not allowed to go with her father, because there was no one to look after her at parents place. On the insistance of the respondent mother, her father took at her parents place and she delivered the baby in the hospital. It is her case that the respondent did not bother to meet the hospital expenses and none of them came to take her and her child back, from the respondent's side, and therefore, she along with her elder brother went to respondent. She has further deposed that as she has given birth to female child, she was illtreated as they wanted respondent to leave the house alongwith her daughter and it is due to this type of harassment and cruel treatment, she had no choice but to leave her matrimonial house. It is after 3 years, she was constrained to make an application for maintenance as she was unemployed and has no source of income and has become a burden to her parents.

10. The aforesaid evidence given by the applicant has gone unchallenged, which clearly establishes the fact that the applicant was treated with cruelty to such an extent that she was forced to leave the matrimonial home, to go and to reside with her parents. On the date when the application for maintenance was made, it is not disputed that the respondent/husband was having sufficient income as he was plying auto rickshaw. The respondent/husband has admitted to the effect that out of plying rickshaw, he was earning Rs.200/- per month, which is his case in the written statement and that in his evidencve, he had stated that he is earning Rs.1,200/- per month and out of it, he is paying Rs.2,500/- towards instalment of loan. The evidence of the respondent if read as a whole, according to learned counsel for respondent, indicates that, though he has not cross examined the applicant, the applicant wife does not deserve to be granted any maintenance, itself falsifies the case of the respondent/husband. We are unable to reconcile the contradictory stand taken by the respondent.

11. From the evidence on record, we find that except mere denial of the fact that applicant/wife was treated with cruelty, there is nothing to show on record that she has deposed falsely before the Court, in respect of

the reason why she was required to leave the matrimonial home. Merely because during counselling in the Family Court an offer was made to reside seperately with the wife, and that she did not accept it, that itself cannot disentitle her from claiming maintenance.

12. The learned counsel for the respondent has cited 3 authorities before us, in support of his contention. First being in case of **Dattatraya s/o. Champatgir Giri Vs. The State of Maharashtra [1993 Cri. L.J. 2181]** wherein the Court has held that in case of wife having no justification to withdraw the company of the husband, order of maintenance is liable to be set aside. Second case is - **Sayyed Jabbar Ali Vs. Mst. Saheba Fatema w/o Sayyed Jabbar [2002(1) Mh.L.J.623] wherein** it is held that the wife against whom the decree for conjugal rights has been passed and the wife without justifiable reason did not join the respondent / husband, she cannot claim maintenance. These 2 authorities are the decisions of learned Single Judge of this Court and there cannot be any quarrel towards the principle laid down in the 2 judgments. The last one is rendered by the Hon. Supreme Court in the case of **Deb Narayan Halder Vs. Smt. Anushree Halder [AIR 2003 Supreme Court 3174]**, in which the Supreme Court held that allegations of demand of dowry and cruelty by husband,

not supported by evidence on record and therefore, the reasons given for her illtreatment cannot be considered without any justifiable ground and she is not entitled to maintenance.

13. The facts of the present case are distinguishable, as herein the evidence led by the wife as regards cruel treatment meted to her by her in laws and husband, and thereafter when she gave birth to a female child, she was forced to leave the house, has gone unchallanged.

14. In so far as the case of the respondent/husband that he has no sufficient means to maintain his wife, is concerned, such a stand is taken before this court, which is contrary to the admitted fact that the time when the application for mainteance was filed, he was plying auto rickshaw, there is nothing brought on record to show that respondent/husband is totally dependent on his family members and has no source of income.

15. We therefore, find that the learned Judge of the Family Court was not right in refusing to grant maintenance to the applicant/wife, in spite of she having mde out the case of cruel treatment meted to her by her in laws and respondent/husband, which made her to

leave matrimonial hosue. It is pertinent to note that in spite of while being deserted for 10 years, or a decade, the respondent has not bothered to initiate any matrimonial proceeding and has left his wife in the hands of fate. We therefore, quash and set aside the judgment and order of the Family Court to the extent of rejecting the application of maintenance to the wife and allowing maintenancce to the wife. We direct that respondent shall pay maintenance to the applicant / wife @ Rs. 1,500/- per month from the date of the application, before the Family Court and would continue to pay the same.

16. The applicant wife is also entitled for costs which we quantify at Rs.5,000/-.

17. The Revision Application stands disposed off accordingly.

Sd/-
[A. A. SAYED, J.]

Sd/-
[**J. N. PATEL, J.]**